

1. Information Disclosure Statement

Applicant kindly thanks the Examiner for acknowledging the documents submitted in the Information Disclosure Statement filed on August 13, 2008 have been considered. However, Applicant is re-submitting the citations previously outlined on the PTO Form 1449 provided with Applicant's aforementioned Information Disclosure Statement (i.e., BA-BL on the current PTO Form 1449), along with documents AA, BM, BN, and BO herein, since the retuned PTO Form 1449 does not indicate the documents were, in fact, considered by the Examiner. In fact, the Examiner has gone so far as to indicate in the current Office Action,

The Information Disclosure Statement, filed 14 August 2008, has been considered but the citations thereon are not being entered. Those citations are Official Actions from copending application. The PTO Form 1449 does not provide for such disclosures.

Finally, applicants have shown no bases [sic] in either statute or the Manual of Patent Examining Procedure that either allow or require such citation be made on a PTO Form 1449.

However, this is blatantly incorrect.

First and foremost, the Examiner's attention is directed towards the entire section of MPEP §609, including subsections. As outlined in the entire section of §609, documents cited in an Information Disclosure Statement can be patents, publications, U.S. patent applications, **or other information**. See MPEP §609.04(a). Additionally, 37 C.F.R. §1.98(a)(1) clearly states,

A list of all patents, publications, applications, **or other information** submitted for consideration by the Office. (Emphasis added)

Therefore, the Examiner's contentions are clearly misguided with respect to: (i) the PTO Form 1449 does not allow for the disclosure of information provided previously and herein by Applicant; and (ii) there is no basis for such submissions. In fact, if the Examiner's arguments were to be adopted, then the, "or other information" language in 37 C.F.R. §1.98 would be completely superfluous and unnecessary. However, this clearly is not the case, and as such, the Examiner's position undoubtedly cannot be adopted.

Furthermore, Applicant notes that similar submissions made in the Information Disclosure Statements for co-pending U.S. Patent Application Serial No. 10/518,692 were formally considered and acknowledged by the Examiner, with the Examiner initialing the adjacent box provided for the Examiner's initials in the PTO Form 1449. As such, Applicant respectfully takes exception with respect to the Examiner's argument that,

Further, the citation thereof may adversely affect the prosecution in any copending application whose Office Action(s) may be cited that issue at a later date than the instant application, should it mature into a patent.

In fact, even if the scenario above were to occur, the Examiner has not explained exactly how this would "adversely affect the prosecution" in any possible co-pending application(s).

In light of the above, the Examiner is respectfully requested

to consider the documents submitted herein, and formally acknowledge so by initialing the PTO Form 1449 in the space allotted.

2. Allowable Subject Matter

Applicant kindly thanks the Examiner for acknowledging currently pending claims 7-9 are allowable.

**3. Double Patenting Rejection to Co-Pending Application, Serial
No. 10/577,270**

Applicant respectfully traverses the instant double patenting rejection of claims 1-6, 10, and 11 to claims 14-26 of co-pending U.S. Patent Application Serial No. 10/577,270, which is published as U.S. Patent Application Publication 2007/0078224. Arguments in Applicant's response of August 13, 2008 with respect to U.S. Patent Application Serial No. 10/577,270 are incorporated herein by reference in their entirety.

First and foremost, as outlined in Applicant's aforementioned response of August 13, 2008, the instant application has a filing date of **December 20, 2004**, whereas co-pending U.S. Patent Application Serial No. 10/577,270 has a filing date of **April 26, 2006**. Therefore, the instant application is the earlier filed pending application, whilst U.S. Patent Application Serial No. 10/577,270 is the later filed co-pending application. As such, Applicant respectfully believes the instant double patenting

rejection should be withdrawn given Applicant's arguments in Section 4 of this response, in conjunction with MPEP §804 (I)(B)(1), which states,

If a 'provisional' nonstatutory obviousness-type double patenting (ODP) rejection is the only rejection remaining in the earlier filed of the two pending applications, while the later-filed application is rejectable on other grounds, the examiner should withdraw that rejection and permit the earlier-filed application to issue as a patent without a terminal disclaimer. If the ODP rejection is the only rejection remaining in the later-filed application, while the earlier-filed application is rejectable on other grounds, a terminal disclaimer must be required in the later-filed application before the rejection can be withdrawn.

Notwithstanding the above, Applicant respectfully maintains the arguments outlined on page 15, last paragraph, to page 22, line 13, and page 24, line 7, to page 25, line 17, in Applicant's previous response of August 13, 2008. For the sake of brevity, those aforementioned arguments are not repeated herein; however, as discussed *supra*, all arguments, including those referenced above regarding U.S. Patent Application Serial No. 10/577,270, are incorporated herein by reference in their entirety.

In light of the above, Applicant respectfully request the Examiner to reconsider, and withdraw the instant rejection.

**4. Double Patenting Rejection to Co-Pending Application, Serial
No. 10/499,182**

Applicant respectfully traverses the instant double patenting rejection of claims 1-6 and 10 to claims 1-9 of co-pending U.S.

Patent Application Serial No. 10/499,182, which is published as U.S. Patent Application Publication 2006/0047071. Arguments in Applicant's response of August 13, 2008 with respect to U.S. Patent Application Serial No. 10/499,182 are incorporated herein by reference in their entirety.

First and foremost, claims 2, 4, and 6-8 in co-pending U.S. Patent Application Serial No. 10/499,182 have been cancelled rendering the instant rejection of currently pending claims 1-6 and 10 in the instant application thereto moot.

Notwithstanding, Applicant respectfully traverses the current rejection given the Examiner's concession in the Reasons for Allowance in the Notice of Allowance mailed February 22, 2008 for the instant application. In particular, the Reasons for Allowance stated, in part,

Further, it is agreed with applicants that the claims of copending application SN 10/499,182 (US 2006/0047071) do not provide sufficient bases to reject the claims as being double patenting. The copending application requires additional constituents that provide different results from those recited. The second component of the copending application requires a two-part blend which is not obvious from the instant claimed invention. The instant claims are deemed to be patentable over the copending application, as pointed out by applicants in the Response of 4 February 2008.

Accordingly, since the Examiner has acknowledged the claims for the instant application are patentably distinct from the claims of co-pending U.S. Patent Application Serial No. 10/499,182, Applicant respectfully believes the current rejection should be withdrawn.

Nevertheless, Applicant respectfully maintains the previous arguments set forth regarding co-pending U.S. Patent Application Serial No. 10/499,182 in Applicant's response of August 13, 2008. For the sake of brevity, Applicant has not reiterated all of the arguments outlined in the Applicant's previous aforementioned response herein; however, as outlined *supra*, all arguments in Applicant's previous response of August 13, 2008 regarding co-pending U.S. Patent Application Serial No. 10/499,182 are incorporated herein by reference in their entirety. In particular, in addition to the abbreviated and reiterated arguments above, the current application claims, in part, polyolefin compositions comprising:

55-80% of component 1), which is a crystalline propylene homopolymer or copolymer, with the copolymer comprising up to 15% of at least one of ethylene and C₄-C₁₀ α -olefin(s), and component 1) comprising a MFR value of at least 15 g/10 min;

20-45% of component 2), which is a copolymer of ethylene comprising from 10 to 40% of at least one C₄-C₁₀ α -olefin(s);

wherein the polyolefin compositions comprise:

- (i) MFR (230 °C, 2.16 kg) values of at least 15 g/10 min;
- (ii) a total content of ethylene of 20% or more;
- (iii) a total content of C₄-C₁₀ α -olefin(s) of 4.5% or more;
- (iv) a ratio of the total content of ethylene to the total content of C₄-C₁₀ α -olefin(s) of 2.3 or more; and

- (v) an intrinsic viscosity value of a fraction soluble in xylene at room temperature of at most 1.7 dl/g.

Alternatively, U.S. Patent Application Serial No. 10/499,182 currently claims polyolefin compositions comprising **a different component 1), a different component 2), and different final properties**. In fact, component 1) of U.S. Patent Application Serial No. 10/499,182, **does not recite a MFR value; component 2) comprises two sub-components (i.e., copolymer (a) and copolymer (b) in a weight ratio of 1/4 to 4/1),** whereas component 2) in the current application comprises a **copolymer of ethylene**; and the final polyolefin composition **comprises different final properties**. As such, Applicant respectfully believes the compositions are, in fact, patentably distinct from one another.

Additionally, even if some of the constituents of the currently pending claims do overlap with some of the constituents of the currently pending claims for co-pending U.S. Patent Application Serial No. 10/499,182 as purported by the Examiner, which Applicant respectfully denies as outlined above, this in and of itself is not sufficient to establish a *prima facie* case of double patenting. See MPEP §804 and §804 II. In fact, in order to establish a *prima facie* case of obviousness-type double patenting, it is incumbent on the Examiner to: (I) determine the scope and content of the claims at issue; (II) determine the differences between the scope and content of the claims at issue; (III) determine the level of ordinary skill

in the pertinent art; and (IV) evaluate any objective indicia of nonobviousness. Additionally, any obviousness-type double patenting rejection should make clear: (A) the differences between the inventive subject matter defined by the conflicting claims; and (B) the reasons *why* a person of ordinary skill in the art would conclude that the inventive subject matter defined in the claim at issue is anticipated by, or would have been an obvious variation of, the inventive subject matter defined in a claim of the co-pending application. See MPEP §804(I)(B)(1). However, since the Examiner has not made clear: (A) the differences between the subject matter defined by the conflicting claims; and (B) *why* a person of ordinary skill in the art would conclude that the subject matter defined in the currently rejected claims are anticipated by, or would have been an obvious variation of, the subject matter defined in a claim in the cited co-pending U.S. Patent Application, Applicant respectfully traverses the current rejection.

Therefore, Applicant respectfully believes claims 1-6 and 10 are patentably distinct from the currently pending claims in co-pending U.S. Patent Application Serial No. 10/499,182.

CONCLUSION

Based upon the above remarks, the presently claimed subject matter is believed to be novel and patentably distinguishable over the prior art of record. The Examiner is therefore respectfully requested to reconsider and withdraw all the rejections, and allow

all pending claims 1-11. Favorable action with an early allowance of the claims pending in this application is earnestly solicited.

The Examiner is welcomed to telephone the undersigned practitioner with any questions or comments if it is believed such contact will expedite prosecution for this application.

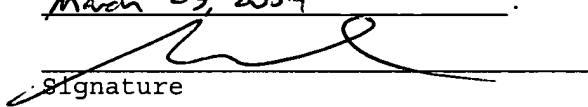
Respectfully submitted,

By: 

Jarrod N. Raphael
Registration No. 55,566
Customer No. 34872

Date: March 23, 2009
Basell USA Inc.
Delaware Corporate Center II
2 Righter Parkway, Suite 300
Wilmington, Delaware 19803
Telephone No.: 302-683-8176
Fax No.: 302-731-6408

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop Amendment, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450 on March 23, 2009.


Signature

3/23/09
Date